

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

MAURICE GORDON, SR. INDIVIDUALLY
AND AS Administrator of the ESTATE of
MAURICE GORDON, JR., RACQUEL
BARRETT,

Plaintiffs,

v.

RANDALL WETZEL, GURBIR SINGH
GREWAL, individually and in his official
capacity as Attorney General for the State of
New Jersey, PATRICK J. CALLAHAN.
Individually and in his official capacity as
Colonel of the New Jersey State Police, the
State of New Jersey, and JOHN/JANE DOES
1-10, being fictitious names for persons whose
identities are presently unknown, individually
and in their official capacities,

Defendants.

Case No. 1:21-cv-04861-NLH-AMD

**DEFENDANT RANDALL WETZEL'S ANSWER TO PLAINTIFFS' COMPLAINT
WITH AFFIRMATIVE DEFENSES**

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Defendant, Randall Wetzel (“Wetzel” or “Defendant”), responds to the Complaint of Plaintiffs, Maurice Gordon Sr., individually and as Administrator of the Estate of Maurice Gordon, Jr., and Racquel Barrett (“Plaintiffs”), as follows:

PRELIMINARY STATEMENT¹

1. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

2. Denied.

3. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

JURISDICTION AND VENUE

4. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

5. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

6. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

7. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

PARTIES²

9. Denied as stated.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

¹ For organizational purposes only, Defendant adopts the headings utilized in Plaintiff’s Complaint.

² The Complaint lacks a paragraph 8. In the interests of organization, Defendant will likewise skip paragraph 8.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

17. Admitted that Defendant Wetzel is a white New Jersey State Trooper. The remaining allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

20. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

STATEMENT OF FACTS

22. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

23. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

37. Denied as stated.

38. Admitted.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

40. Denied as stated.

41. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

42. Admitted.

43. Denied as stated.

44. Denied as stated.

45. Denied as stated.

46. Denied as stated.

47. Denied as stated.

48. Denied as stated.

49. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

50. Denied as stated.

51. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

52. Denied as stated.

53. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

54. Denied as stated.

55. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

56. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

57. Denied as stated.

58. Denied as stated.

59. Denied as stated.

60. Denied as stated.

61. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

62. The allegations in this Paragraph are confusing and ambiguous to the extent that they refer to the previous Paragraph and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

63. Denied as stated.

64. Denied.

65. Denied as stated

66. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

67. Denied as stated.

68. The allegations in this Paragraph are confusing and ambiguous and, as such, Defendant is unable to admit or deny the allegations in this Paragraph.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of this paragraph and thus leaves Plaintiffs to their proofs.

FEDERAL CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION - ON BEHALF OF ESTATE
(Against Wetzel for Use of Excessive Force)

76. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

77. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

78. Denied

WHEREFORE, Defendant seeks a dismissal of Count I of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

SECOND CAUSE OF ACTION – ON BEHALF OF ESTATE
(Monell Claims Against the State of New Jersey and Against Gurbir Singh Grewal and Patrick J. Callahan, individually and in their official capacities)

79. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

80. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

81. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

82. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

83. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

84. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

85. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

86. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

WHEREFORE, Defendant seeks a dismissal of Count II of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

STATE CLAIMS FOR RELIEF
THIRD CAUSE OF ACTION – ON BEHALF OF ESTATE
(Against Sgt. Randall Wetzel for Conscious Pain and Suffering)

87. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

88. Denied.

89. Denied.

90. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

WHEREFORE, Defendant seeks a dismissal of Count III of Plaintiff's Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

FOURTH CAUSE OF ACTION – ON BEHALF OF ESTATE
(Against Sgt. Wetzel and the State of New Jersey for
Death by Wrongful Act Pursuant to N.J.S.A. 2A:3 1-1, *et seq.*)

91. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

92. Denied.

93. Denied.

94. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

WHEREFORE, Defendant seeks a dismissal of Count IV of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

FIFTH CAUSE OF ACTION – ON BEHALF OF ESTATE
(Against Sgt. Randall Wetzel and the State of New Jersey for Assault and Battery)

95. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

WHEREFORE, Defendant seeks a dismissal of Count V of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

**SIXTH CAUSE OF ACTION – ON BEHALF OF ESTATE
(Against Sgt. Randall Wetzel and the State of New Jersey for Negligence)**

101. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

102. Denied.

103. Denied.

104. The allegations of this Paragraph are argumentative and call for a legal conclusion and, thus, no further response is required.

105. Denied.

106. Denied

107. Denied.

WHEREFORE, Defendant seeks a dismissal of Count VI of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

**SEVENTH CAUSE OF ACTION – ON BEHALF OF MAURICE GORDON, SR. AND
RACQUEL BARRETT
(Against Sgt. Randall Wetzel and the State of New Jersey for
Loss of Consortium Pursuant to Death by Wrongful Act Statute
[N.J.S.A. 2A:3 1-1, *et seq.*] and Under Common Law)**

108. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

109. Denied.

110. Denied.

WHEREFORE, Defendant seeks a dismissal of Count VII of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

PUNITIVE DAMAGES

111. Defendant hereby incorporates his responses to the previous paragraphs as if set forth fully herein.

112. Denied.

WHEREFORE, Defendant seeks a dismissal of Plaintiffs' Complaint, with prejudice, together with fees and costs of suit in accordance with the Rules of Court, and such other relief as the Court deems just.

SEPARATE/AFFIRMATIVE DEFENSES

As separate and distinct defenses to Plaintiff's alleged causes of action, Defendant, without conceding that they bear the burden of proof as to any of them, and without in any way admitting any of the allegations of the Complaint, allege as follows:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' Complaint is barred by virtue of the doctrine of avoidable consequences/mitigation of damages.
3. At all times referred to in the Complaint, Defendant acted justifiably, lawfully, in good faith, with due care, and without negligence or improper motive, purpose or intent.
4. Defendant did not breach any legal duty owed to Plaintiff.
5. Any and all damages, injuries, or losses suffered by Plaintiff were caused, in whole or in part, by the conduct of Plaintiff and/or others parties known or unknown to Defendants.
6. Defendant is entitled to judgment under the doctrine of qualified immunity.
7. Plaintiff's claims are barred by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, *et seq.*
8. Plaintiffs' claims are barred because they failed to give proper notice of claim under the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, *et seq.*

9. This suit is barred by the Eleventh Amendment.
10. Defendant reserves the right to supplement/amend these defenses as discovery continues.

JURY DEMAND

Defendant demands a trial by jury as to all issues so triable.

Respectfully submitted,

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